Comment on Recent Cases

Accord and Satisfaction—Effect of Creditor's Cashing Check for Less Than Amount of Debt.—The decision in the case of Lapp-Gifford Company v. Muscoy Water Company,[1] at least in so far as it discusses the matter of accord and satisfaction, would seem entirely sound, and it may be taken as settled that under the circumstances of that case, a creditor is safe in accepting a check for a sum less than the debt which is owing him. The claim involved was a liquidated and undisputed one, and the debtor sent a check for a smaller amount, stating that it was sent as final payment. Held, that the creditor by cashing the check, at the same time notifying the debtor that he received it only on account, did not discharge the debtor's obligation for the balance. Would the decision of the court have been the same if the plaintiff had signed a receipt in full, as requested by the defendant? It was so held in two earlier cases,[2] which follow the common law closely,[3] and have the support of decisions in many American jurisdictions.[4] The theory on which these cases proceed is that there is a want of consideration for the agreement of the creditor to accept a less sum than is due him. But it may be questioned whether the rule which they establish can be reconciled with Section 1524 of the Civil Code of California, providing that "part performance of an obligation . . . when expressly accepted by the creditor in writing, in satisfaction, . . . extinguishes the obligation." The purpose of this section of the code, as set forth by its framers, was to change the common law rule, and to make possible an accord and satisfaction by the payment of a lesser sum than the amount of the debt,[5] a result which, however, seems hardly to have been attained. The fact that the section to which we have made reference was not noticed in either of the two California cases cited, may lend some force to the suggestion that were the point to be raised again, and Section 1524 of the Civil Code sufficiently urged, a different conclusion might be reached.

Where a note for less than the amount of a liquidated debt was accepted in lieu of the whole sum due, it has been held in California that the agreement was void, and that there was no accord and satisfaction.[6]

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[1] (Dec. 12, 1912), 15 Cal. App. Dec. 821.

[2] Peachy v. Witter (1901), 131 Cal. 316. 63 Pac. 468; Rued v. Cooper (1897), 119 Cal. 463, 51 Pac. 704.

[3] Foakes v. Beer (1884), L. R. 9 App. Cases 605.

[4] 1 Cyc. 311, note 37; Allison v. Abendroth (1888), 108 N. Y. 470, 15 N. E. 606; Lathrop v. Page (1880), 129 Mass. 19; U. S. v. Bostwick (1876), 94 U. S. 53, 67.

[5] Civil Code of California, 1872. Code Commissioners' note to Section 1524.

[6] Siddall v. Clark (1891), 89 Cal. 321, 26 Pac. 829.

In the case so holding, no notice was taken of Sections 1521 to 1523 of the Civil Code, but the decision was rested on the authority of Deland v. Hiett,[7] a case decided prior to the adoption of the codes. On the other hand these sections are cited in Dobinson v. Macdonald [8] as supporting the rule that "the obligation could . . . be extinguished by an agreement on the part of the plaintiffs to accept less than that to which they were entitled, provided such agreement was executed on the part of the defendant."

The effect of acceptance by the creditor of a lesser sum than he claims is due him, when the amount of the debt is the subject of a bona fide dispute, has not been definitely determined in California. Only one case has arisen in which the point is discussed,[9] and that case establishes no more than that where a creditor has accepted without objection a check for a sum of money less than is claimed by him, and which was expressly tendered to him as payment in full, he is estopped to later set up that he regarded the payment as having been made only on account. The weight of authority in American jurisdictions other than California, however, has established the further rule that if the check is stated to be given in full payment of the debt, and the tender is accompanied with such acts or declarations as amount to a condition that if the check is accepted at all it is accepted in full satisfaction of the disputed claim, and the creditor so understands, its acceptance by the creditor constitutes an accord and satisfaction. It is immaterial that the creditor states at the time that the amount is not all that is due, and that he does not accept it in full satisfaction.[10] It is submitted that this rule, rather than one more liberal to the creditor, should be adopted in California, when the question arises. Not only is it in entire accord with the language and spirit of the code, but it seems easily sustainable on well known principles of the common law. The tender made by the debtor is in the nature of such an offer to compromise a disputed matter as it is the policy of the courts to favor, and the creditor has no right to accept the consideration of the compromise, and at the same time avoid the result sought to be attained. The true situation is that the creditor has, by accepting the debtor's tender, entered into a binding contract collateral to the transaction on which his claim is based, and conclusively determining the extent of his rights.[11]

J. U. C., Jr.

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[7] Deland v. Hiett (1865), 27 Cal. 611, 87 Am. Dec. 102.

[8] (1891), 92 Cal. 33, 37, 27 Pac. 1098.

[9] Creighton v. Gregory (1904), 142 Cal. 34, 41, 75 Pac. 569. See also Pac. Coast Casualty Co. v. Home Telephone Co. (1909), 11 Cal. App. 712, 106 Pac. 262.

[10] 1 Cyc. 333; Williston's Wald's Pollock on Contracts, 3d American from 7th English ed., p. 839; Cooper v. Yazoo R. R. (1903), Miss., 35 Southern 162; Ostrander v. Scott (1896), 161 Ill. 369, 43 N. E. 1089; Fuller v. Kemp (1893), 138 N. Y. 231, 33 N. E. 1034, 20 L. R. A. 785.

[11] But see comment contra in Williston's Wald's Pollock on Contracts, edition supra, pages 839, 840.